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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Discrimination against HIV-infected people or people with AIDS

Final report submitted by Mr. Varela Quirós, Special Rapporteur

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Introduction

1. By its resolution 1990/65 of 7 March 1990 entitled "Discrimination against people infected with HIV or people with AIDS", the Commission on Human Rights endorsed the appointment of the Special Rapporteur to undertake a study on problems and causes of discrimination against people with AIDS or infected with HIV. This study had been proposed for consideration by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1989/17.

2. In the preliminary and progress reports (E/CN.4/Sub.2/1990/9 and E/CN.4/Sub.2/1991/10), the principal questions which this study would investigate were put forward. The Special Rapporteur was also requested to investigate in particular discrimination against certain racial, national and any other groups that are affected by the HIV/AIDS pandemic.

3. Since the presentation of his progress report (E/CN.4/Sub.2/1991/10), the Special Rapporteur has taken note of the most recent information in this field so that the present report will as far as is possible reflect the most up-to-date information available. In part, this information originates from Government sources, specialized bodies within the United Nations system, non-governmental organizations and other sources, in particular from specialized publications.

4. In accordance with what had been arranged by the Sub-Commission in decision 1991/109, the present report should have been the final report on the question of discrimination against HIV-infected people or people with AIDS. However, for reasons which the Special Rapporteur will explain, the final report cannot be presented this year: the Special Rapporteur therefore requests that he be allowed to present it at the next session.

5. On the one hand, the advisory services which should have been offered to the Special Rapporteur were delayed considerably, and at the time of drafting this report, the fate of these services has not yet been determined; in spite of the efforts of the Secretariat to supply the necessary support, it has been quite impossible for the Special Rapporteur, in just one single week of consultation in Geneva, to analyse all the materials at his disposal. The Special Rapporteur must bring to the attention of the Sub-Commission the necessity of being able to rely on appropriate and adequate support and on minimum financial means in order to be able to carry out his work, that would otherwise be quite prejudiced or which could not be properly completed.

6. On the other hand, the number of replies to the questionnaire received from Governments, specialized agencies and non-governmental organizations was not as large as expected; for this reason, it would be helpful if the Sub-Commission itself could make a special request to Governments, specialized agencies and non-governmental organizations that they should offer the greatest possible support to the Special Rapporteur by returning these questionnaires, duly completed.

7. Given the above circumstances, the Special Rapporteur is unable to submit his final report for consideration by the Sub-Commission; in this report, in which some of the recent developments in the field are discussed, an attempt

is made to highlight the main issues of practical and theoretical concern to the Sub-Commission and to point the way for the development of effective strategies for preventing AIDS-related discrimination. The epidemiological part of the report is drawn from reports of the World Health Organization, and the remainder of the report draws heavily on the work and analysis undertaken by the International Association of Rights and Humanity; the Special Rapporteur is grateful to the Association for permission to quote extensively from its publications which has enabled him to prepare this report in the very limited time available.

I. THE GLOBAL AIDS SITUATION 1/

8. It is just over 10 years since the first cases of what is now known as acquired immune deficiency syndrome (AIDS) were first identified. Since then the human immuno-deficiency virus (HIV) which causes AIDS has spread worldwide, crossing divisions of race, class, age, gender and sexual orientation. In the space of just one decade AIDS has turned into a pandemic affecting millions of men, women and children on all continents. Although the first reported cases were among homosexual men in a few industrialized countries, it soon became clear that this was an epidemic of much greater scope.

9. In the world as a whole, heterosexual intercourse has rapidly become the dominant mode of transmission of the virus. As a result, the developing countries already hold as many newly infected women as men, and the developed countries are approaching equal incidence in men and women. Perinatal transmission, i.e. transmission of HIV from an infected mother to her unborn or newborn baby, is showing a corresponding increase. Homosexual transmission, on the other hand, has remained significant in North America, Australasia and northern Europe, although even in these areas heterosexual transmission is showing the fastest rate of increase. Transmission through contaminated blood transfusions has been virtually eliminated in industrialized countries: in developing countries, steps are being taken to prevent transfusion-related infections, although much remains to be done and the costs are high. Bloodborne transmission through needle sharing outside the health-care setting is on the rise among a number of drug injectors in the developed and developing world.

10. As of early 1992, the World Health Organization (WHO) estimates that at least 10-12 million adults and children worldwide have become infected with HIV since the start of the pandemic. Among them, some 2 million have gone on to develop AIDS - the late stage of HIV infection, which occurs 10 years on average after initial infection with the virus. By the year 2000, WHO estimates that cumulative totals of 30-40 million men, women and children will have been infected, and 12-18 million will have developed AIDS.

11. WHO anticipates that nearly 90 per cent of the projected HIV infections and AIDS cases for this decade will occur in developing countries. In sub-Saharan Africa, where over 6 million adults are estimated to be already infected, the situation is critical. As many as one-third of pregnant women attending some urban antenatal clinics are HIV-infected, and such seropositivity rates are being seen outside cities as well. As a result,

WHO now projects that 5-10 million HIV-infected children will have been borne by the year 2000. By the mid-1990s the projected increase in AIDS deaths in children will begin to cancel out the reduction in mortality achieved by child survival programmes over the past two decades.

12. In those African countries where the prevalence of HIV infection is already high, life expectancy at birth will actually drop by 5-10 per cent instead of rising by 20 per cent by the year 2000, as was projected in the absence of AIDS. In Asia, which holds more than half the world's population, the dramatic rise in seroprevalence between 1987 and 1991 in South and South-East Asia may well parallel that seen in sub-Saharan Africa in the early 1980s, and by the mid to late 1990s more Asians than Africans will be infected each year. As of early 1992, Latin America and the Caribbean were estimated to have over 1 million HIV-infected adults.

13. The brunt of the AIDS pandemic is thus increasingly being borne by the developing countries. In parts of sub-Saharan Africa the pandemic's overall social and economic impact is already enormous and is bound to become more devastating still. The health and social support infrastructure is inadequate to handle the clinical burden of HIV-related disease, which includes an upsurge in tuberculosis. In some cities, up to three quarters of all hospital beds are already occupied by AIDS patients, and the case-load will continue to rise as today's middle-aged adults, who include members of social, economic and political elites, as well as professional health workers and teachers, could lead in some societies to economic disruption and even political turmoil. Through the deaths of young men and women, innumerable children and elderly people are already being left without support. In sub-Saharan Africa alone, 10-15 million children will be orphaned by the year 2000 as their mothers, or both parents, die of AIDS. A similar scenario can be expected in Asia, Latin America and other parts of the developing world in the first decade of the twenty-first century.

14. WHO reports that despite the continued growth of the pandemic, information from many national AIDS programmes yields an encouraging picture of progress in mounting a global response to it. More and more, people are being informed about how they can protect themselves and others from infection, the supply of condoms is being strengthened, donated blood is increasingly being screened for HIV, and resources and staff for HIV/AIDS prevention and care are being expanded.

15. But WHO has also recognized that the same factors that fuelled the pandemic in the first place are still impeding prevention and control efforts. These include ignorance about the nature of the disease, denial of the relevance of AIDS to the individual or to society, and complacency or paralysis in the face of the pandemic's magnitude. These are being aggravated by the continued stigmatization of HIV-infected persons and those perceived as being at risk of infection as well as the subordinate social and economic status of women. Thus discrimination is exacerbating the spread of HIV, and the ultimate success of AIDS prevention and control will depend on how effectively discrimination and stigma are combated, and other obstacles to effective programmes overcome.

II. IMPORTANCE OF PREVENTING AIDS-RELATED DISCRIMINATION

16. In its 1992 Update of the Global Strategy for the Prevention and Control of AIDS, WHO emphasizes the importance to the success of public health efforts of preventing discrimination and stigma. It concludes that to combat AIDS effectively, societies must function on sound public health principles and not succumb to scapegoating, stigmatizing or discrimination against HIV-infected persons in the vain hope of curtailing the pandemic. In the case of HIV/AIDS, these irrational reactions often stem from ignorance about routes of transmission, fear of AIDS as a fatal disease, and the stigma attached to an infection that is for the most part spread sexually. It is vital to combat these reactions through international as well as national pressure.

17. All sectors of society, including the media, have a responsibility to explain in plain terms, understandable by all, that there exists no risk of acquiring HIV infection - or any other sexually transmitted disease - through casual contact, and that hence there is no public health rationale to justify isolation, quarantine or other restrictive measures based solely on a person's HIV infection status.

18. Public health experts throughout the world are united in the view that there is no public health rationale for restricting the rights and liberties of people with HIV or AIDS solely on the basis of their serostatus. On the contrary, experience indicates that coercive policies can be counter-productive to public health efforts. As Sir Donald Acheson, former Chief Medical Officer for England and Wales, has argued:

> "... there is no shred of evidence that HIV is transmitted by personal contact or through the medium of air, food or water. There is therefore no case for isolating people infected with HIV from other people, or for limiting their freedom to live wherever they wish, to follow whatever occupation they please, or to go to ordinary schools. Nor is there any rational basis for subjecting them to coercion, penalties or discriminatory action of any kind.
>
> "On the contrary ... far from helping to reduce the spread of HIV, coercive actions, penalties, lack of confidentiality and discrimination are likely to have the opposite effect. By discouraging people from seeking help, such actions will deter people from facing up to the fact that they may be infected, and from taking action to reduce the risk to themselves and others. What is needed is a positive approach characterized by facing up to the problem both collectively and individually, by disseminating truthful and explicit information, and by providing confidential advice, voluntary testing and medical and social support for those infected." 2/

19. Thus respect for the principle of non-discrimination is not only a human rights imperative but also a technically sound strategy for ensuring that infected persons are not driven underground, where they are inaccessible to education programmes and unavailable as credible bearers of AIDS prevention messages for their peers. As WHO has emphasized, any attempt to isolate, detect and confine infected persons is dangerous for still another reason:

it can never be 100 per cent effective, yet it creates the illusion that all infected persons are out of reach and that precautions against sexual transmission of HIV are no longer necessary.

20. The need to combat AIDS-related discrimination thus now forms an important part of the global AIDS strategy. But many people still regard AIDS as a problem affecting only a small minority of people, or one which they mistakenly believe is not a problem for their own society, although, as we have seen, AIDS is now a serious public health concern in every region of the world. Further, the human rights community itself has not yet fully taken up the challenge of addressing the human rights implications of AIDS, considering the pandemic to raise medical rather than human rights issues.

21. There are two complementary human rights rationales for preventing AIDS-related discrimination: the first is that non-discrimination is essential for the protection of the public health, and thus of the right to life; the second is the moral and legal imperative of ensuring that the equal worth and dignity of everyone is fully respected without discrimination. As article 1 of the Universal Declaration of Human Rights confirms "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Our response to HIV and AIDS and to the people most affected by this pandemic challenges us to reconfirm our commitment to respecting this truth. Our success in preventing AIDS-related discrimination is vital not only for those suffering stigma and social isolation as a result of HIV infection or AIDS, but for the whole of society.

22. As Dr. Asvall, Regional Director of WHO Regional Office for Europe, has written:

> "Like sea dykes protecting the land from being overflooded by the wild and destructive forces of the ocean, threatening to turn fertile soil into barren ground, respect for human rights is under constant attack, challenged by numerous forces and often from unexpected sides. What may at first glance appear to be a tiny fissure easy to ignore, can rapidly grow into a major disaster if nothing is done to stop it. This may never have been more true and applicable than when it comes to issues of AIDS, public health and human rights. During the past decade the world has witnessed a new challenge to the prosperity and well-being of all persons, put into motion by the introduction of HIV into our societies. A vicious and self-perpetuating circle of taboos, denial, ignorance, blame, scapegoats, stigmatization and marginalization has to a certain extent come into being. Thus a breach in the 'human rights dyke' has been created - still tiny, only affecting a relatively small number of persons, and to a great extent neglected by the majority." 3/

23. The urgency of the need to address AIDS-related discrimination is recognized by the international health community. What is now essential is for the human rights community to lead the way in developing strategies for preventing discrimination and building a supportive environment in which the rights of all might be respected. It is clear that the effective promotion of the public well-being and health requires a society in which human rights are adequately respected for all without discrimination. Violations of human rights not only debilitate the individual, but threaten the very fabric of society.

III. DISCRIMINATORY PRACTICES

24. In last year's progress report the Special Rapporteur considered in some detail the nature and causes of HIV- and AIDS-related discrimination (E/CN.4/Sub.2/1991/10, paras. 32-121). Unfortunately, the points raised in that discussion still reflect the reality of many people's lives. This report will not repeat what has already been stated, rather, it will draw the attention of the Sub-Commission to some other aspects of AIDS-related discrimination which are becoming of increasing concern, and which require further research.

25. More and more evidence is coming to light that certain aspects of criminal law and procedures may impede public health efforts to prevent HIV transmission. For instance, the existence of criminal penalties for homosexuality frequently acts as a barrier to effective dissemination of AIDS information and education. Fear of legal or other reprisals lead many homosexuals to be reluctant publicly to admit their sexual orientation. As a consequence they are less accessible to AIDS educators, counsellors and health-care providers.

26. Similarly, criminal laws surrounding prostitution sometimes make it more difficult to reach prostitutes and their clients with education messages about safer sex practices. In one country, for example, where soliciting for prostitution is illegal, sex workers run particular risks of infection because of the practice by some police and courts of regarding the carrying of condoms by sex workers as evidence of soliciting. These points raise sensitive issues about the relationship between respect for individual human rights and dignity and the rule of the State and criminal process, and requires further research and analysis.

27. Further consideration also needs to be given to discrimination in the enjoyment of economic rights in the context of AIDS. The link between poverty and vulnerability to HIV infection is already evident. At the individual level, unemployment and homelessness breed despair, with the attendant risk that people in such circumstances might seek solace in alcohol or drugs. Economic necessity may push women, men, and even children, into prostitution, with inevitable risks to their health. At the national level, economic recession is, in a number of countries, dislocating medical supplies and causing severe difficulties in meeting basic standards of sterile procedures in the provision of health care. At the international level, we are witnessing a rise in sex tourism and the mass movement of people across national borders in search of economic opportunities and a standard of living adequate for their health and well-being. 4/

28. There are also alarming reports that children of an ever younger age are at risk of HIV infection through prostitution. Further research is required into the impact of poverty and prostitution on children in the light of the AIDS pandemic, and urgent steps taken to protect the rights of children at risk. The Special Rapporteur strongly recommends that this issue be considered by all appropriate bodies, in particular the Committee on the Rights of the Child.

29. The interim report adopted by the Committee on the Rights of the Child at its first session (CRC/C/7) in November 1991, makes no reference to the risk of HIV infection in children. Neither was there any relevant information in last year's report adopted by the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1991/41 and Corr.1).

30. The question of children and AIDS has thus far only been addressed by Mr. Vitit Muntarbhorn, Special Rapporteur of the Commission on Human Rights on the Sale of Children. There was no mention of this issue in Mr. Muntarbhorn's first report on the sale of children presented to the Commission in 1991 (E/CN.4/1991/51), but his second report submitted to the Commission at its forty-eighth session in 1992 (E/CN.4/1992/55 and Add.1) considers this issue briefly.

31. In paragraph 138 the Special Rapporteur reports that in some areas of the world, customers of prostitutes are opting more and more for younger prostitutes, particularly virgins, in the belief that they will protect themselves from the threat of AIDS. He continues in paragraph 157 (b):

> "... Countries such as India, Thailand and the Philippines, which reportedly have a heavy case-load of prostitutes, are becoming more burdened with the AIDS question and the impact of that disease on child prostitutes. Many of the local girls (and boys), and girls brought in from other countries, have tested HIV positive. In Thailand, particularly as regards the latter group, the legal framework itself may regrettably discriminate them in three ways: they are illegal because they are prostitutes in breach of the law concerning prostitution, they are also illegal because they enter the country in breach of the immigration law, and they may also be subjected to discrimination because of the relevant anti-AIDS law, policy, or practice. If they are deported to their country of origin, there are insufficient guarantees to protect them upon arrival in that country. Nor are sufficient support services provided to facilitate their return to a normal life."

32. In the year since compiling the last progress report, AIDS-related discrimination has also surfaced in the field of international sport. The public statement by a prominent United States sportsman that he was infected with HIV led to threats from teams from other countries that they would refuse to play against the United States team at the Barcelona Olympics if this man remained on the team.

33. Such attitudes are often based on misplaced fears of infection. They emphasize the need for sports associations to develop appropriate guidelines and to educate their members in the need for non-discriminatory attitudes. Further research is required into the extent of this problem, and into the appropriate strategies to protect the rights of people infected with HIV to continue their work, and to participate in sport and other recreation. The Special Rapporteur proposes drafting a further questionnaire which will seek to ascertain such information from appropriate sources.

34. In last year's report reference was made to the vulnerability of women to HIV infection as a result of discrimination in the enjoyment of their legal, economic and social rights. The Special Rapporteur draws attention to this issue again in the present report, both because of the increasing number of women who are being infected with HIV (WHO has estimated that at least 3 million women worldwide are currently infected with HIV), and because the provisions of the Convention on the Elimination of All Forms of Discrimination against Women shed light on the obligations of States to protect individuals from discrimination.

35. The Convention confirms that States have a duty to ensure both that the rights of women are adequately protected by the law; and that women are empowered to enjoy their rights to education, employment, health care and other resources of society, and on an equal footing with men. Thus, States are required, when necessary, to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. This latter responsibility is of particular importance in the context of AIDS, as customary practices and cultural attitudes frequently compound women's vulnerability both to the risk of HIV infection, and to the impact of discrimination and other abuses of rights associated with the pandemic.

36. The International Association of Rights and Humanity has conducted research into the human rights consequences for women of the AIDS pandemic and has constantly highlighted the discrepancy between international legal texts and the reality of many women's lives throughout the world. In a paper presented at the VII International AIDS Conference held in Florence in 1991, it noted:

> "In many cases, national laws contravene international human rights norms by, for instance, denying women the right to own property, and acquire mortgages and other forms of financial credit. They frequently limit women's rights within marriage and, on separation or divorce, deny women equal custodial rights to their children." 5/

37. This study emphasizes that women's lack of education and training, combined with legal and social obstacles to employment, lead many women into economic dependence on men, thus restricting the possibilities open to these women to protect themselves from the risk of HIV infection. In addition, it argues that women may be more vulnerable due to lack of adequate information about the risks of HIV:

> "... many women are denied the opportunity to take part in public life, and suffer discrimination in the enjoyment of the rights to education, employment, health care, and other benefits of society. This lack of equality of access to literacy, education, training and health care restricts women's access to knowledge about AIDS, and the measures that may be taken to prevent infection."

38. Poverty and lack of status often force vulnerable women and children into prostitution, thus placing them at grave risk of HIV infection. The study also notes that stereotypes are sometimes perpetuated in AIDS education programmes. Such messages as "avoid prostitutes" heighten assumptions that all prostitutes are infected, and this places them at increased risk of social stigma and discrimination. All too often, programmes to reduce spread of HIV through prostitution focus on prostitutes as "vectors of disease", thus failing to recognize the role of clients in spreading HIV, and the risk this poses to the prostitutes themselves - as well as to the other sexual partners of the clients. The authors conclude that the more effective policies are those which recognize the rights and dignity of prostitutes, and support them in making choices about alternative means of livelihood.

39. A study by Hamblin and Reid entitled "Women, the HIV Epidemic and Human Rights: A Tragic Imperative", notes that:

> "[w]omen are also in a markedly disadvantaged position with respect to confidentiality. The majority of HIV-infected women discover their HIV status during pregnancy or when one of their children becomes sick with AIDS. At this point, any confidentiality protection for the woman disappears as local knowledge of the child's illness leads to open assumptions about the HIV status of the mother. The child's father often refuses to be tested. The woman is frequently held responsible for having transmitted HIV to her children, even though it is usually the husband who introduced HIV to the family unit. The consequences of this lack of control over the disclosure of her HIV status can be blame, social alienation and repudiation by her husband." 6/

40. These authors also emphasize that discrimination in enjoyment of equal rights by women increases their risk of exposure to HIV infection. As they state:

> "These scenarios paint a grim picture of a cycle of dependency in which women are forced into activities that place them at risk of HIV infection and where their ability to free themselves from their dependent role is further reduced by the day to day reality of coping with the consequences of the HIV epidemic. Unless the cycle can be broken, there is every risk that it will be perpetuated, leading to the deaths of increasing numbers of women and men. HIV infection and AIDS have become frightening manifestations of the underlying social and economic inequality of women. Measures to address this inequality must be central to efforts to contain the spread of HIV."

41. They further note that the discrimination suffered by HIV-infected women heightens women's vulnerability to the impact of HIV/AIDS.

> "The right to freedom from discrimination has a powerful meaning for women who are blamed by men for the consequences of HIV infection. Women who are powerless to avoid the risk of exposure to HIV, whether through sexual contact with their husbands, prostitution or other means, are none the less blamed for having been a vector of HIV infection and suffer stigmatization, rejection and expulsion from family and community structures. The failure to recognize the rights of these women to

> protection against discrimination, in addition to being morally indefensible, has further compounded the inability of women to protect themselves against the effects of HIV."

42. It is often assumed that women are primarily at risk of infection through prostitution or injecting drug use. However more and more studies from Africa, Latin America, and other regions of the world with high rates of heterosexual transmission of HIV indicate that the major risk factor for HIV infection in married women, and their children, is the premarital and extramarital sexual activity of their husbands. Reid estimates that between 60 per cent and 80 per cent of HIV-infected women in Africa have had sexual intercourse solely with their husband. 7/

43. The Rights and Humanity study 8/ stresses that even when a woman knows or suspects that her partner has been unfaithful to her, her economic dependence on him and her lack of assertiveness skills may prevent her from being able to insist on safer sex practice to protect her from infection. This is further complicated in those societies where a woman's status is dependent upon her role as wife and mother, which makes it socially unacceptable for her to suggest condom use - as this would prevent conception. Indeed in many societies a double sexual standard exists, in which women are expected to remain faithful to their husbands, and to turn a blind eye to their husbands' infidelities. This, coupled with women's lack of legal rights, particularly rights in respect of matrimonial property and child custody, confront a woman with a stark choice: she must either stay with her husband and risk being infected or risk losing her home and her economic support base, which in itself increases her vulnerability. The study concludes that a woman's ability to protect herself from the risk of infection is directly linked to the protection of her rights by law, and her economic and social status.

44. Its authors quote a further example. International law confirms the equal rights of women and men to the highest attainable standard of health care. Yet it is well known that in many regions women lack adequate access to basic health care and treatment for sexually transmitted diseases and may suffer such traditional practices as female circumcision with obvious adverse consequences to their health. In addition, within the context of AIDS care, there is growing recognition that in some countries women are not receiving equal medical treatment to that provided to men, both in respect of access to drugs and chemical trials and to hospital beds.

45. In their study, 9/ Hamblin and Reid note that the United Nations Development Programme has prepared a set of policy principles to assist and guide policy formulation relating to programming and personnel policies. These include the principle that "the power imbalances in interpersonal relationships and in society which create women's subordination must change if women are to be able to protect themselves from HIV infection and its consequences". Within the UNDP policy framework, priority has been given to:

> "... measures to address women's needs for prevention, care, support and access to treatment, to reduce discrimination and trauma, to strengthen their ability to protect themselves from infection and to assist affected women to meet their child rearing, domestic and economic responsibilities."

46. Further analysis of the application of this policy is required before its impact on women's rights can be evaluated. The International Research and Training Institute for the Advancement of Women (INSTRAW) has also identified that additional research is required into the impact of AIDS on women. It is thus proposing a research project entitled "Women and AIDS: A New Dimension to Discrimination", which will entail a study on the socio-economic and cultural factors that contribute to the spreading of the HIV/AIDS virus to women and the negative long-term impact of women's HIV/AIDS on the social fabric of communities in developing countries.

47. Preliminary analysis of the topic indicates that current knowledge on HIV/AIDS is gender and culture biased, and as a result women face additional discrimination. This discrimination lies in legal and social policies, and in scientific and medical research where women are excluded from drug trials and efforts are focused on prevention methods that are not applicable for use by most women. Therefore, INSTRAW considered that studies on AIDS should be gender sensitive in order to reflect the actual situation of both men and women with a view to implementing appropriate and effective policies.

48. As was reported in the Special Rapporteur's progress report (E/CN.4/Sub.2/1991/10, paras. 266-269), the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women have both taken up the issue of women and AIDS. Reference was made to Recommendation No. 15 adopted by the Committee at its ninth session in 1990. The recommendation entitled "Avoidance of discrimination against women in national strategies for the prevention and control of AIDS" provides in paragraph (d):

> "... that all States parties include in their report under article 12 of the Convention [on the Elimination of All Forms of Discrimination against Women] information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS."

49. The need to protect women from discrimination in the enjoyment of their rights is, of course, of particular concern to the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women, but this issue is dealt with in this report as the Special Rapporteur considers that protecting women from discrimination in the enjoyment of their human rights should also form an important priority for all human rights bodies, including the Commission on Human Rights and the Sub-Commission.

IV. LEGAL AND POLICY FRAMEWORKS FOR PROTECTION AGAINST DISCRIMINATION

50. In his progress report, the Special Rapporteur dealt in some detail with the legal and conceptual frameworks for addressing AIDS-related discrimination, and indicated issues which needed further consideration (E/CN.4/Sub.2/1991/10, paras. 137-238). Since that report was written, a number of studies have been commenced concerning national AIDS legislation which, when completed, will be of great assistance to the Rapporteur in preparing his report (these studies are mentioned below, paras. 92-100). Similarly, continued attention has been paid to the issue of AIDS-related discrimination in a number of international bodies including the Commission on Human Rights.

51. At its forty-eighth session, in its resolution 1992/56, the Commission on Human Rights called upon all States "to take all the necessary steps to ensure the full enjoyment of civil, political, economic, social and cultural rights by people with HIV or AIDS, their families and those in any way associated with them, and people presumed to be at risk of infection, paying particular attention to women, children and other vulnerable groups, in order to prevent discriminatory action against them or their social stigmatization, and to observe these obligations in particular in the context of AIDS policies and measures". It also invited "the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and other similar bodies to give full attention to monitoring States parties' compliance with their commitments under the relevant human rights instruments regarding the rights of people infected with HIV or AIDS, their families and people with whom they live, or people presumed to be at risk of infection".

52. This resolution reflects the widely held view that AIDS-related discrimination is not only a threat to public health, but violates the non-discrimination provisions of international human rights texts. The Gambian Minister of Justice, Hassan B. Jallow, writing on AIDS in the context of the African Charter on Human and Peoples' Rights, notes:

> "The principle of non-discrimination is fundamental to the concept of human rights and crucial to the question of AIDS because, too often, HIV carriers and AIDS sufferers are subjected to discriminatory practices. Non-discrimination is the first principle enshrined in the African Charter. Article 2 [provides]: 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'
>
> "... Article 2 lists the forbidden grounds for discrimination ... But the article also prohibits discrimination 'of any kind' and prefaces its list with the words 'such as'; in addition, the list ends with the phrase, 'or other status'. Therefore, the list is not exhaustive. Accordingly, a law which discriminated against people with HIV or AIDS might constitute a violation of the African Charter, even though this ground for discrimination is not expressly forbidden by Article 2." 10/

Mr. Jallow continues by considering what constitutes "discrimination" for the purposes of article 2. Taking guidance from the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee, he writes:

> "Briefly, the right to non-discrimination demands that any difference in treatment must be based on reasonable and objective criteria. It follows that individuals with HIV or AIDS who are subjected to differential treatment without reasonable and objective justification, may have had their rights violated under Article 2 of the African Charter." 11/

Since discrimination and stigma undermine public health, he concludes that "discrimination against people with HIV/AIDS will usually entail a violation of Article 2".

53. Similarly, La Vertu has written:

> "Equality before the law, and freedom from discrimination, is a cornerstone of human rights. Bars to discrimination are attempts to ensure that the law treats all people equally, that no distinctions are arbitrary. Distinctions in the law must be based on reasonable grounds. While none of the human rights texts discuss HIV seropositivity, or even 'handicapped' or other afflicted individuals, the intent is clearly to have distinctions related to the purpose of law. Here the chief social value is the firm belief that all human beings are created equal. All human beings have the right to develop and lead a normal life, within their own capacities.
>
> "... Whilst physical impairment is not specifically included as a discriminatory distinction in [human rights] texts, in recent years, civil rights have been expanded to prohibit discrimination against the handicapped. This line of reasoning would seem to lead to a conclusion that discrimination based on a test of seropositivity is questionable." 12/

As this author points out, it does not appear that any cases concerning AIDS-related discrimination have yet been presented to the various international human rights commissions and courts, and since all domestic remedies will need first to have been exhausted before raising such a case before an international tribunal, it is unlikely that any international cases will be presented in the near future. Cases based on national constitutional declarations of fundamental rights would be a more likely avenue for these questions to be resolved, and some countries are already grappling with the human rights issues raised by AIDS.

54. One of the recurring themes in the discussion of AIDS and human rights is the relationship between the duty of States to protect the public health and the duty to protect individuals from discrimination. As Hausermann has written:

> "Virtually all States have developed public health laws and regulations to empower health authorities to take appropriate and speedy steps to control infection. Many of these public health laws were originally introduced before the development of effective antibiotics and other recent medical advances. As a result they sometimes authorize the taking of drastic measures such as the isolation and quarantine of persons with contagious diseases. Unfortunately, a review of the history of response to the control of epidemics shows that all too often these powers have been used in a response to fear and public pressure, rather than being based on public health necessity.
>
> "Whilst human rights texts foresee that limitations on individual liberties may be necessary in order to protect public health, human rights norms also require that public health authorities only introduce measures which are strictly necessary to protect the public health. Any

measures which restrict individual rights and liberties must be proportionate to the aim pursued, and should, in no circumstance, discriminate against any particular individuals or sector of society. In addition the policy adopted should be the least intrusive and restrictive method of achieving the desired end.

"... in the context of HIV and AIDS public health experts throughout the world are united in the view that there is no public health rationale for restricting the rights or liberties of people with HIV or AIDS solely on the basis of their serostatus. On the contrary, experience indicates that coercive policies can be counter-productive to public health efforts. Thus, any such measures would be a double violation of human rights. First, they would violate the rights of the individuals affected. Second, they risk running counter to the State obligation to protect public health.

"... the experience of the first 10 years of addressing HIV and AIDS ... indicates clearly that respect for human rights norms and for the principles of ethics and humanity is an essential component of effective AIDS programmes, and that the most successful policies are those which are voluntary and participatory, supportive and enabling, and in other ways respect human rights and dignity. The experience of the first decade of AIDS indicates that respect for human rights and the protection of public health and well-being are interrelated and mutually dependent concepts." 13/

55. The breadth of the human rights issues raised in the context of AIDS and obligations of States and other organs of society are addressed in a note verbale containing the Rights and Humanity Declaration and Charter on HIV and AIDS which was submitted by the Gambian Government to the Commission on Human Rights at its forty-eighth session in 1992 (E/CN.4/1992/82). These two texts were drafted by the International Association of Rights and Humanity in collaboration with public health experts, human rights lawyers, ethicists, representatives of the world's major faiths, people with HIV and AIDS and organizations working on their behalf from all over the world, and thus reflect a truly global understanding of the issues involved.

56. The Rights and Humanity Declaration sets out the human rights norms and principles of ethics and humanity applicable in the context of AIDS, whilst the Charter indicates the concrete responsibilities these principles impose on States, professionals, corporations and other institutions of society, as well as individuals. These documents are thus relevant not only to the Sub-Commission's consideration of AIDS-related discrimination, but also to its wider mandate of the prevention of discrimination and protection of minorities and are recommended for the distinguished members' consideration. Both the Declaration and Charter deal with the issue of discrimination and, in the Special Rapporteur's view, reflect the current state of international human rights law. They thus provide a useful starting point for a consideration of international protection against AIDS-related discrimination, and the relevant paragraphs are therefore quoted in full.

57. The Rights and Humanity Declaration states:

"Article 6. By international law the principle of non-discrimination prohibits discrimination in the enjoyment of economic, social, cultural, civil and political rights on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term 'or other status' should be interpreted to include personal circumstances, occupation, lifestyle, sexual orientation, and health status. The principle of non-discrimination also requires the equal access of all people to education, health care, housing and other resources of society.

"Article 7. As the United Nations Human Rights Committee has confirmed, equality before the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities. Thus, the principle of non-discrimination applies to all State policies and practices, including those concerning travel regulations, entry requirements and immigration.

"Article 8. All people living with illness or disability, including people with HIV and AIDS, are entitled to enjoyment of their fundamental human rights and freedoms without any unjustified restriction."

58. The Rights and Humanity Charter of Responsibilities to Respect Human Rights and the Principles of Ethics and Humanity in Addressing the Public Health, Social and Economic Dimensions of HIV and AIDS includes the following paragraphs on addressing discrimination:

"109. Respect for the principle of non-discrimination requires that people with HIV and AIDS should suffer no discrimination in the enjoyment of their economic, social, cultural, civil and political rights. However, throughout the world people with HIV infection or AIDS and people believed to be engaging in risk behaviours suffer social stigmatization and discrimination in the enjoyment of their fundamental rights, and are denied the opportunity of living full lives in accordance with their inherent dignity.

"110. The obligation of States to ensure that all individuals within its territory are protected from discrimination in the enjoyment of their rights and freedoms includes protection against discrimination on the grounds of HIV infection or AIDS. States are under an obligation both to repeal or amend as appropriate any existing laws or practices which discriminate against people on these grounds, and to avoid the introduction of new laws or policies which are discriminatory. States should ensure that people with HIV and AIDS suffer no discrimination in terms of access to the resources of society such as education, health care and social welfare. Similarly, States should ensure that people with HIV and AIDS are free to choose their place of residence within their country, to leave and return to their country of origin, and to enjoy, without arbitrary interference, their rights to marry and found a family.

"111. The obligation of States to avoid any discrimination in law or in fact in any field regulated by public authorities requires, for example, that people with HIV and AIDS are not subjected to special requirements with respect to travel. There is no public health justification for preventing a person from entering a country solely on the grounds of his or her suspected or actual HIV serostatus. Furthermore, according to the International Health Regulations adopted by States under the auspices of the World Health Organization, currently the only justifiable public health ground for requiring a medical certificate in the context of international travel is infection with yellow fever. Thus, to require certificates identifying HIV status, or to restrict travel on the basis of suspected or actual HIV infection is arbitrary and discriminatory.

"112. Further, States should ensure that their asylum policies and entry requirements do not discriminate against people with HIV and AIDS in the enjoyment of their right to seek and enjoy in another country asylum from persecution. In particular, States should ensure that their policies do not prevent family reunion, or offend the principle of customary international law and refugee conventions prohibiting refoulement, or return of refugees to their country of origin.

"113. Protecting the rights of people with HIV and AIDS, and others facing discrimination, also requires increased public education efforts to counter underlying prejudices which lead to stigmatization and discrimination and to promote tolerance, compassion, and solidarity. Thus it is essential that in devising AIDS information campaigns, language which introduces or perpetuates stigma and negative attitudes towards individuals or groups is avoided.

"114. The obligation of States to ensure that all individuals within its territory are protected from discrimination in the enjoyment of their rights and freedoms includes an obligation to ensure legal protection against, and redress for, discrimination by third parties in the enjoyment of such rights as the right to work and access to housing, and in the areas of legal and other public services.

"115. For their part, employers, public and private landlords and others involved in providing public services, must ensure that their policies and action do not cause discrimination against people with HIV and AIDS.

"116. Insurance companies, for example, should ensure that any special terms or conditions imposed on people with HIV and AIDS are stictly justified by their health condition. In particular, insurance companies should ensure that no one is prejudiced in relation to the availability or terms of an insurance policy solely on the grounds that he or she has undergone an HIV test.

"117. There is no public health rationale for denying a person with HIV or AIDS the right to work, nor is there justification for requiring an HIV test as a prerequisite for employment. It would be unethical for a doctor carrying out a pre-employment medical examination to undertake an HIV test requested by the employers without the informed consent of the

applicant concerned. An infected person in employment who becomes ill as a result of AIDS is entitled to the same protection and security as employees suffering comparable illness or disablement.

"118. The rights of everyone to life and to participate in the cultural life of society entitle people with HIV and AIDS, their families and communities to 'live positively' with AIDS. Respect for human rights and dignity and for the principles of humanity oblige everyone to share in the building of a supportive environment for people with HIV and AIDS. Rather than viewing people with HIV and AIDS as 'victims' requiring 'charity', emphasis should be given to empowering individuals to live in dignity, supported as necessary in a spirit of solidarity.

"119. People with HIV or AIDS and other people living with illness or disability, have the right to live their lives as fully as they are able whilst respecting the rights of others. Social isolation and denial of the opportunity to live full lives, not only violates the rights of the individuals affected, but denies their society and humanity as a whole the benefit of their unique contribution and the potential of their creative energy. Respect for the right of people with HIV or AIDS to live their lives as fully as they are able requires that they have the opportunity to participate actively in the design, implementation and evaluation of AIDS policies and programmes."

V. SYNOPSIS OF REPLIES TO QUESTIONNAIRE AND OTHER SURVEYS

A. Replies to questionnaire

59. Replies to the questionnaire sent out by the Special Rapporteur indicate that a number of States have now introduced laws and/or policies to combat AIDS-related discrimination, and are thus implementing to a greater or lesser extent the above principles. The questionnaire sought to gain information concerning the legal and policy framework introduced in response to AIDS, and was sent to Governments, United Nations organs, specialized agencies, intergovernmental bodies and relevant non-governmental organizations. The Special Rapporteur is grateful to the Secretariat for producing the following synopsis of replies received to date.

1. Governments

60. Out of a total of 41 Governments which replied to the questionnaire (see annex I for list of States and organizations responding to the questionnaire), some did not answer all the questions stating either that a question was not applicable or that no information was available. Others replied to questions by cluster, without identifying the 30 questions separately.

61. A majority of Governments have established special commissions to coordinate AIDS policies at the national level, sometimes reporting under the Ministry of Health, sometimes with an independent status. The Minister of Health is very often chairman ex officio and representatives of other ministries function as members. The role of these commissions is primarily conceived as advisory.

62. A few Governments referred to a constitutionally guaranteed right of non-discrimination, including the right not to be discriminated against as carriers of the HIV/AIDS virus. Others stated that no special measures were in force to provide redress for persons infected with the HIV/AIDS virus, because there was in principle no discrimination. Some reported that redress was possible through the regular national channels and that no special provision was necessary. Most Governments, however, stated that non-discrimination issues were stressed in public information and education programmes through the media and school curricula. If prevention turns out to be better than cure, then the right to non-discrimination for people with HIV/AIDS would be better respected.

63. A number of newly independent States reported that no national legislation had yet been adopted to provide for the protection of the human rights of infected persons. They acknowledged the necessity for special protection in view of the seriousness of the disease. Some Governments responded that no national legislation was necessary in addition to the human rights legislation which already existed. Others stated that no cases of discrimination against persons with HIV/AIDS virus had been reported.

64. A majority of replies referred to the enactment of public health legislation. Some of them considered the protection of the rights of HIV/AIDS-infected persons to be a part of public health legislation. Others reported not to have enacted public health legislation.

65. Most Governments reported that no entry restrictions or travel restrictions in general exist, but some countries reported that if a country of destination required a certificate on the HIV/AIDS status of the traveller, they would comply with such a request.

66. A number of countries mentioned that testing for HIV/AIDS took place anonymously and on a voluntary basis, but that convicted prisoners were tested without prior consent. Some countries reported that their respective Health Departments had no right to inform the employer or school of an infected person, in order to ensure that the human right to privacy was respected. A large majority of Governments stated that tourists were excluded from testing, but that students on scholarships and those seeking residence in their countries were required to take tests.

67. A few Governments reported that target groups in fact received less information about the dangers of the HIV/AIDS infection. Mentioned were minorities and aboriginal people living in remote areas and immigrants who did not speak the national language.

68. One country stated that legal problems with respect to HIV/AIDS-infected persons arise in the context of application and interpretation of human rights provisions. Another country stated that the principle contained in article 14 of the European Convention on Human Rights was directly applicable. This principle, equality before the law, ensures another fundamental right, the right to non-discrimination. However, neither its Court of Cassation, nor the European Court on Human Rights had pronounced itself on the discriminatory character of measures taken in the struggle against HIV/AIDS.

69. The Australian Government, in a detailed reply, stated that its Federal Government's Health Strategy adopted in August 1989 recommended that HIV/AIDS-infected persons should be protected against unfair discrimination. Anti-discrimination legislation should be enacted, extended or clarified covering the areas of employment, education and training. In Australia human rights policies in the context of AIDS are aimed at ensuring respect for the right to non-discrimination by eliminating prejudice, fear and misconceptions about transmission of the disease. Legislation protecting the human rights of people with AIDS varies between the various jurisdictions. At present the powers of the Commonwealth of Australia to legislate in this area are under review. The Commonwealth amended the Human Rights and Equal Opportunities Act of 1986 to expand the Commission's jurisdiction to include inquiry, conciliation and reporting of cases involving discrimination in employment and occupation; however, the Commonwealth has constitutional powers to legislate only in limited areas.

70. The States of New South Wales, Victoria, West and South Australia have enacted anti-discriminatory legislation relevant to AIDS. Recently, bills or proposals for anti-discriminatory legislation have been enacted by the Governments of Queensland, Tasmania, the Northern Territory and the Australian Capital Territory. Some of Australia's public health legislation has been amended to take the HIV/AIDS virus into account. The public health legislation in most jurisdictions requires the notification of HIV/AIDS cases and enables the isolation of those infected. The National HIV/AIDS strategy has recommended that public health legislation should not provide for automatic isolation of infected persons, and recommended a change in the existing legislation. There is specific legislation relating to HIV in New South Wales and Western Australia. In Western Australia, HIV-infected persons are prohibited from working in the food and drug industry under the Health Act of 1911.

71. Immigrants and refugees are required to take the HIV/AIDS test, if applying for permanent residence. However, being seropositive does not necessarily exclude someone from obtaining residence. The testing of homosexuals and prostitutes is voluntary, undertaken only with specific informed consent. The National HIV/AIDS strategy commits the Government to a public education campaign involving the Human Rights and Equal Opportunities Commission, directed against prejudice and other factors which will give rise to HIV selective discrimination. It provides that education for the general community focuses on community attitudes and provides reassurances about living with the epidemic and infected people.

72. In contrast, the Philippine Government replied that no measures have yet been adopted in that country to provide redress for HIV-infected persons or people with AIDS who have suffered discrimination. However, the Government attempts to prevent discrimination as a matter of policy. Attempts are under way to investigate governmental policies which could discriminate against infected people. At present no legislation has been enacted to protect the human rights of infected persons, nor is there any public health legislation

yet in existence to protect infected persons from discrimination. Immigration legislation provides for mandatory screening of immigrants, refugees and illegal aliens; tourists are excluded from mandatory testing. Human rights issues are incorporated in information campaigns. The Government acknowledged that minorities living in remote areas could not have, or be provided with, the required information.

73. The Government of the Philippines reported also on the goals and principles set forth by the Western Pacific Regional Office of WHO in this regard. It stated that the WHO regional office involves the local human rights network to help to prevent discrimination against infected persons. It propagates that detention should not be used as a pretext to prevent or control the spreading of AIDS. It reported that the WHO strategy is aimed at ensuring respect for the following human rights: right to privacy, liberty and security of person, right to marry and found a family, freedom of movement, right to education and work, right to social security, assistance and welfare, right to equal protection of the law, right to freedom from inhuman and degrading treatment.

74. Ukraine replied that no cases of discrimination had occurred, but protection was guaranteed by a special law on AIDS dated 23 April 1990, and a joint decree of the Council of Ministers of the Ukraine and the Federation of Independent Trade Unions. The protection was aimed in particular at the social position of persons with HIV/AIDS by another law dated 29 December 1990. Foreign nationals and stateless persons entering Ukraine must be tested if they intend to work or study. Human rights issues, including the right to non-discrimination, are taken up in HIV/AIDS information and education programmes.

2. United Nations system

(a) United Nations Interregional Crime and Justice Research Institute (UNICRI)

75. UNICRI transmitted a synthesis of the Italian Law on AIDS and Drug Abuse (Law No. 135) which established by article 8 the National Ministerial Committee for the Fight against AIDS under the presidency of the Council of Ministers. It is aimed at the implementation of measures provided for in the Global Plan of Action for the Fight against AIDS. In this connection, UNICRI mentioned that a national commission for the Fight against AIDS had been established in January 1987 as a consultative body. This commission is the advisory body at the national level both for the Ministries involved and the regional authorities. Law 135/90 prohibits: (a) subjecting anyone to testing for HIV/AIDS without consent, including prison inmates; (b) discrimination in school or work relations, including job applications; and (c) investigation on eventual seropositivity of employees both in public and private sectors. The Italian Parliament is currently debating a Bill which could introduce mandatory testing for admittance to the police forces.

(b) United Nations High Commissioner's Office for Refugees (UNHCR)

76. UNHCR elaborated in March 1988 policy guidelines regarding refugee protection and AIDS. It recommended that these principles and guidelines should be included in national programmes and legislation. The UNHCR policy takes as its point of departure that refugees are not an "at risk" group for infection with the AIDS virus and that therefore they should not be subjected to specific measures unless these measures are applied to all residents, citizens and refugees of the country concerned, alike. It agrees with WHO that there is no justification for screening refugees, because of their status as it will not prevent the introduction or spread of AIDS. The UNHCR furthermore reported that, in its view, fundamental human rights principles provide guidance on the policies and practices to be adopted by States and UNHCR in ensuring protection and solutions for refugees with AIDS, or who test HIV seropositive.

77. Article 25 of the 1948 Universal Declaration of Human Rights, inter alia, declares the right of everyone to a standard of living adequate for their health, including medical care and necessary social services, and the right to security in the event of sickness. Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by States party to this Covenant to achieve full realization of this right are to include those necessary for the prevention, treatment and control of epidemic and other diseases; and the creation of conditions which assure to all medical service and medical attention in the event of sickness. Article 15, moreover, provides for the right of everyone to enjoy the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific field. The Covenant also provides that special measures should be taken to protect the rights of particular groups, such as the family, and mothers and children and young persons (art. 10). UNHCR points out that article 2 (2) of the Covenant confirms the applicability of the principle of non-discrimination to matters of health, and medical care and treatment. Permissible limitations on freedom of movement for public health reasons, for example, to prevent the spread of contagious disease, in no way pre-empt the general principle. Such limited restrictions are recognized in article 12 of the 1966 International Covenant on Civil and Political Rights, article 5 (1) (e) of the 1950 European Convention on Human rights, and article 22 (3) of the 1969 American Convention on Human Rights.

78. In addition, UNHCR had collaborated with the International Organization for Migration on the subject of joint IOM/UNHCR guidelines on the management of HIV/AIDS among refugees in Thailand. These guidelines adopted in June 1990 recognize that confidentiality in the strictest medico-legal sense is difficult to maintain. However, the twin concern of basic human dignity and refugee protection demand that all persons involved in the screening process should respect confidentiality.

(c) United Nations Department of International Economic and Social Affairs (DIESA)

79. In the opinion of DIESA, the questionnaire was too long for non-governmental and intergovernmental organizations. Many questions dealt with AIDS-related efforts undertaken at the national level primarily by WHO's Global Programme on AIDS. Reference was made to the Handbook on HIV/AIDS for United Nations Employees and Their Families as proposed by Inter-Agency Advisory Group on AIDS within the United Nations system. In the proposed handbook, it is stipulated that HIV infection does not in itself constitute a lack of fitness to work, neither could it constitute a basis for termination of contract. In addition HIV-infected employees should not be discriminated against, including in the enjoyment of the right to access to and receipt of benefits from statutory and social security programmes.

(d) International Research and Training Institute for the Advancement of Women (INSTRAW)

80. INSTRAW reported that it is proposing a project entitled "Women and AIDS: A New Dimension to Discrimination" referred to above (para. 46). As for the questionnaire prepared by the Special Rapporteur, it suggested that a gender component be introduced into some of the questions. For example, in a question regarding the portrayal of HIV/AIDS-infected persons in official information campaigns, it is important to determine whether persons of both sexes are being portrayed. Moreover, if women are featured in the information campaigns how they are portrayed is significant, i.e. whether they are portrayed as prostitutes and seen as contributing to the spread of the disease, or portrayed as victims having contracted the disease from their spouses/partners or from transfusions of contaminated blood.

(e) United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

81. UNRWA replied that its opinions on human rights aspects of AIDS are in accordance with WHO guidelines.

(f) United Nations Development Programme (UNDP)

82. UNDP stated that, as a multilateral agency, it found it difficult to respond to questions which were clearly directed towards a national audience.

(g) World Health Organization (WHO)

83. WHO replied that the questions raised in the questionnaire were designed for response by Governments, regional, intergovernmental and non-governmental organizations rather than United Nations organizations and specialized agencies. It stated that the principles contained in the Global Strategy on AIDS are valid for all partners in the global effort against AIDS, whether in developed or developing countries or whether governmental or non-governmental

groups, scientists, or laymen, or organizations or individuals. The strategy underlines that discrimination against people with HIV/AIDS is an irrational response stemming from stigma attached to sexually transmitted diseases and the mistaken belief that HIV can be transmitted through social contact. It also interferes with the supportive environment needed for prevention programmes. Non-discrimination is thus vital, both for the sake of human rights and because of its strong public health rationale.

(h) International Labour Office (ILO)

84. ILO did not make specific comments on the questionnaire, but referred to its recommendations presented to the Inter-Agency Advisory Group meeting. As far as terms of appointment to ILO are concerned, ILO reported that there is no systematic screening and that compulsory declaration of HIV status is not required. It stressed that contracts would continue despite a possible HIV infection, and that social protection would be guaranteed. It added that information and education programmes were necessary to maintain a climate of mutual understanding and ensure protection.

3. Intergovernmental organizations

Council of Europe

85. The Steering Committee for Human Rights of the Council of Europe is approaching the problem of human rights and AIDS in the framework of its work on "Development of the concept of non-discrimination amd effective equality - Discrimination and illness". Specific consideration is given to HIV/AIDS-related discrimination, discrimination against those exposed to HIV infection, those belonging to risk groups, those who have been tested and those wrongly perceived as exposed to the virus. A working party is preparing an information document for national authorities considering the human rights aspects of HIV/AIDS in the light of the principal human rights instruments of the Council of Europe.

4. Non-governmental organizations

86. Thirty-one non-governmental organizations replied to the questionnaire sent out by the Special Rapporteur. A large majority attempted to reply to all questions, but did not always succeed. Although most replies revealed no target group discrimination, some answers stated that men serving in the military and men and women serving in the police forces could face discriminatory treatment. Several sources stated that infected persons suffer from discriminatory treatment in the following areas: immigration (application for residency), defence forces (discharge or refusal of employment), medical treatment (dentists, compulsory testing for admittance to hospital), housing (rent), employment medical and life insurances (mandatory testing).

87. One source questioned the length of the questionnaire: it should rather focus on key issues, and suggested that the Special Rapporteur should draft a final questionnaire. In the organization's opinion, it should include reference to human rights issues of AIDS patients, the issue of non-discrimination and the right of HIV/AIDS patients to travel and attend international AIDS conferences. In addition, the questionnaire should include consideration of the rights of infected persons at work and of infected children at school.

88. Another organization, although not replying directly to the questionnaire stated that United States law had been changed to reduce the grounds for excluding infected refugees and immigrants from entering the country. It expressed concern that many refugees in countries of asylum were coming from areas with a high rate of infected persons. This could lead to exclusion or return, which would amount to a violation of the right to non-refoulement. Conversely, infected persons could become a target of repression in their own country and could thus be forced into refugee status.

89. The replies indicated the view that in the majority of cases, the principles of informed consent and confidentiality were respected with regard to testing for HIV/AIDS. Most replies reflected that testing for prison inmates was recommended, and in a few cases was compulsory. Many replies stated that solidarity and anti-discrimination campaigns take place. Discrimination could be viewed as racism, and the only solution to combat this kind of racism is to view AIDS as a global problem and call for equality of treatment.

90. With respect to measures most urgently needed to guarantee respect for human rights, a majority stressed education and information campaigns. Some organizations reported that special legislation was already in place to cover human rights aspects of the problem, others stated that it was desirable to enact additional legislation. One organization recommended an integrated approach to keep the balance between the level of attention being given to the AIDS problem in society and other problems of society involving neglect or denial of human rights protection.

91. A number of organizations reported that they experienced good cooperation with Governments. Some national advisory committees on AIDS include representatives of NGOs, as well as representatives of Governments and local authorities. These committees advise Ministries of Health in the implementation of anti-discrimination policies and AIDS programmes.

B. Other surveys

92. As indicated in the introduction, the questionnaire was by no means returned by all States, and therefore gives only a partial picture of the legislative and policy frameworks introduced in response to AIDS. It is therefore of assistance to consider the results of other research being undertaken in this field.

1. World Health Organization

93. The WHO's Global Programme on AIDS has conducted various studies on AIDS legislation in relation to the AIDS epidemic. Some of the documents, such as the database on tabular information on legal instruments dealing with HIV infection and AIDS, are available. Other studies and databases are currently under consideration. The Special Rapporteur feels that some of these studies could be of considerable use and could be included in his report.

2. Council of Europe

94. The Council of Europe's Directorate of Human Rights has also commissioned an expert study by the Swiss Institute of Comparative Law, which should be completed in the autumn of 1992. Protecting and promoting human rights remains a top priority for the intergovernmental cooperation within the Council of Europe and its Steering Committee for Human Rights (CDDH). One of the activities undertaken by the CDDH concerns the development of the concept of non-discrimination and effective equality and in particular the question of discrimination and illness, including discrimination in the context of AIDS. The study commissioned by the CDDH has the following terms of reference:

"(i) Identify the largest areas of health-related discrimination (taking particular account of those identified by the CDDH Working Party on AIDS and human rights);

"(ii) Analyse existing national and international provisions on protection against discrimination, which may be cited in specific areas of health-related discrimination;

"(iii) Advise the CDDH on the feasibility of a model code drafted by the Council of Europe and, if appropriate, on the precise guidelines for combating health-related discrimination at national level which such a code could contain."

Whilst the survey will be limited to selected countries which are members of the Council of Europe, it will clearly be of interest to the Sub-Commission, and will provide additional material to be included in the report.

3. United States

95. At the national level, a study conducted in the United States gives some insight into the pattern of litigation concerning AIDS-related discrimination in the United States of America during the 1980s. The study was conducted by the AIDS Litigation Project under a contract with the National AIDS Program Office of the United States Public Health Service. 14/ The introduction to the survey notes that AIDS litigation has already led to the largest body of legal cases attributable to a single epidemic in the history of American jurisprudence. Several States and municipalities have enacted AIDS specific statutes or ordinances, and much of this legislation has been directed towards the prohibition of discrimination against people with HIV or AIDS in specific areas of employment and housing. However, the majority of cases surveyed had not been brought under AIDS specific legislation, but under existing civil or criminal laws.

96. Although the survey was not limited to discrimination cases, by far th largest number of cases whether decided, settled or pending, related to discrimination. Of the 139 discrimination cases, 46 related to discriminat in employment, and 45 to discrimination in health-care services. The surve indicated an encouraging shift in emphasis in employment cases. The early cases often involved discriminatory practices by employers in the workplace However, as educational messages and public health guidelines continued to make it clear that HIV cannot be transmitted in the ordinary workplace setting, employers appeared much less likely to exclude infected employees from the workplace. The new wave of cases concerning employment tended to relate to specific risks of exposure to blood, such as that connected with health care or laboratory work.

97. The authors of the survey also identified a discernible trend in the pattern of health-care discrimination cases. The survey revealed that most decided cases in the United States of America concerning access to health c have found that health-care workers have a duty to care for people with HIV AIDS. However, courts have balanced this duty with a requirement that hospitals provide both education in universal precautions for the avoidance the transmission of infection, and the equipment necessary to implement the precautions. In 1973, the Federal Rehabilitation Act was introduced which provides protection for handicapped persons against discrimination in participation in federally funded programmes. The survey indicated that section 504 of this Act has been used successfully to challenge discriminat against persons with HIV by employers or school boards. However, the Rehabilitation Act, and similar State statutes, can only be invoked by peop with the handicap (or in this case with HIV or AIDS), and does not therefor provide a remedy for the families, friends and other associates of people w HIV or AIDS who frequently suffer discrimination themselves.

4. Canada

98. In Canada, AIDS-related discrimination has been considered by the National Advisory Committee on AIDS. The Committee has submitted an adviso report to the Minister of National Health and Welfare on human rights issue as they pertain to people affected by HIV in Canada. 15/ The report entitl HIV and Human Rights in Canada was published in January 1992: it recognize that breaches of human rights in the context of HIV infection occur in Can on the basis of specific cases heard under human rights codes as well as anecdotal information. The Committee fears that such abuses are widespread Human rights abuses occur in relation to housing, workplace situations, and access to medical care. In addition, AIDS-related discrimination exists on the basis of disability, sexual orientation, sex and race. Injecting drug users or prisoners can be particularly vulnerable to such breaches. Blatan incidents have occurred, but many are more subtle. Poverty itself becomes issue in relation to HIV infection - some people become poor because they AIDS, and conversely, people who are poor can be more at risk.

99. The report is set in the context of Canada's commitment to protecting human rights. Protection in Canada is provided by the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the various provinc human rights statutes, all of which establish legal rights for persons wit

disabilities. Although this has been widely interpreted as including discrimination on the basis of HIV infection, the comprehensive protection of the rights of persons with HIV infection has not yet been achieved. The Canadian Human Rights Commission has therefore stated that it will deal with complaints that allege discrimination on the basis of both symptomatic and asymptomatic HIV infection, as well as complaints that allege HIV-related discrimination as a result of perception that the person is HIV infected because of his or her membership in a group practising high risk behaviour, or because of his or her association with a person who is HIV infected.

100. The report emphasizes Canada's commitment to protecting the rights of people with HIV infection which is articulated in the national AIDS strategy. This strategy endorses the principle that persons with HIV infection have the right to live their lives free from discrimination. However, the report recognizes that in some jurisdictions the protection of people with HIV infection is not always adequate. For example, human rights of persons are protected in most jurisdictions on the grounds that AIDS is considered a disability, but it is less clear whether HIV infection is equally deemed a disability. Further, sexual orientation is protected in few jurisdictions in Canada, an omission which allows discrimination on grounds closely associated with HIV infection. In this report, the National Advisory Committee on AIDS strongly recommended that the provisions of the Canadian Human Rights Act should be amended so as to include expressly sexual orientation as a prohibited ground of discrimination. It also recommended that the Canadian Human Rights Commission, Health and Welfare Canada, the Department of Justice and the Secretary of State work collaboratively to develop a national media campaign on discrimination, HIV infection and human rights.

101. As the replies to the questionnaire and these studies indicate, the issue of addressing AIDS-related discrimination is now firmly on the legal and policy agendas of many States. No doubt there have been a number of other studies undertaken at the national and international levels, but as the Special Rapporteur mentioned in his introduction, there has been insufficient time to research this issue more fully. It is hoped that these omissions will be filled, at least to some extent, in the future.

VI. STRATEGIES FOR PREVENTING AIDS-RELATED DISCRIMINATION

102. The restricted time that has so far elapsed between the introduction of non-discrimination measures and the present study have limited the opportunities for an evaluation of the impact of these policies and laws on preventing AIDS-related discrimination. However, some initial observations can be made concerning appropriate strategies to address AIDS-related discrimination.

A. The basic approach: building a supportive environment

103. An interesting feature of the AIDS pandemic is the partnerships that have been developed between different professions in the urgent need to address the pandemic. One such partnership is that between the public health community and the human rights community. Mention has already been made of the mutuality between protection of the public health and respect for individual

rights and dignity. But the partnership has also led to the sharing of ideas about how to approach health issues and other human concerns. Some of the approaches being adopted in the health field are of interest in the protection of human rights, not just in the context of AIDS, but generally.

104. The Global AIDS Strategy promoted by WHO and adopted by States throughout the world has continuously advocated policies which seek to avoid stigma and discrimination and to build a supportive environment for people infected with HIV or in other ways affected by the AIDS pandemic. The thinking behind such policies reflects a growing realization that to make progress in the humanitarian and social justice domain a partnership of many sectors of society is required and the active participation of those whom it is intended to help. The importance of this approach was emphasized at the Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights, organized jointly by the European Regional Office of WHO and the International Association of Rights and Humanity in Prague in November 1991. In a paper presented to the Pan-European Consultation, Rights and Humanity charted the development of this approach, and the following paragraphs are taken from this paper. 16/

105. It emphasized that the creation of a supportive environment is a fundamental requirement for the enjoyment of human rights and the development of the human personality. The paper referred to a marked change in approach in the humanitarian field over the last 10 years - the growing recognition of the need to move from working for people to working in partnership with the people for whose assistance the project was designed. This fundamental change in approach has been recognized at many levels - in the context of overseas development policies, as well as in the approach to social welfare justice within local communities.

106. There has been a marked move away from what might be described as the "soup kitchen" or "handout" approach to charity, towards empowerment and other strategies to promote the fuller enjoyment of human rights. For many years, voluntary agencies working in the fields of social welfare and justice have claimed that the best way of helping people to live in rights and dignity is by involving members of the target group in the development and implementation of assistance programmes, and in other ways empowering them to help themselves.

107. In the context of health, this change in approach has been recognized by WHO in the principles of the Health for All programme, and has also been reflected in the desire to move the relationship between doctor and patient away from paternalism towards a more effective partnership. Similarly, in many countries there is a shift of emphasis away from regarding health as primarily a question of disease control by the medical profession, towards a more preventative approach involving all sectors of society. Nevertheless, differences of opinion about the approach to be adopted in public health still persist. There is a friction between those who recognize the truth of article 1 of the Universal Declaration of Human Rights which confirms that all humans are endowed with reason and conscience, and those that believe that humans are inherently irresponsible and require controlling in order to protect public health and well-being. In the context of AIDS, this has led to the debate between protagonists of more coercive measures and those arguing for voluntary strategies based on strict respect for individual rights and dignity.

108. The need to adopt the second strategy was confirmed both by other presentations at the Pan-European Consultation and by the Consultation as a whole. In his presentation, 17/ Dr. Asval, Regional Director of WHO Regional Office for Europe, strongly resisted the calls for coercive policies, such as isolation and quarantine of infected persons, and presented an alternative approach:

> "Are there any alternatives to such coercive measures, one might ask? Indeed there are! They can be found in the spirit embedded in the basic principles of the Health for All policy and the Ottawa Charter on health promotion, urging us as health professionals in our efforts:
>
> - to start from where people are at, not from where, who and what we would want them to be;
>
> - to empower and enable people to take on the responsibility of their own health;
>
> - to work with people, not just for the people;
>
> - to share the challenge, at local, national and international levels; and
>
> - to respect the life and dignity of all human persons and act against discrimination on the grounds of sex, race, sexual orientation, lifestyle or cultural and social status.
>
> "In this respect the Global Programme on AIDS has become one of the most advanced programmes within WHO, spelling out in great detail the policy implications of these principles. When it comes to successful implementation, some of the best examples can be found in member States that have applied principles of public health rationally tailored to their national situation. Incorporated in this public health approach is close cooperation with the very communities who so far have been most seriously affected by AIDS. Given the right and optimal conditions, including moral and financial support, and the repeal of any discriminatory practices, this collaboration has demonstrated an amazing ability to reduce risk behaviour and alleviate the negative social consequences of HIV infection. In this way, a wealth of innovative approaches and activities has been launched, setting an inspiring and encouraging example to follow for the rest of the world. People living with HIV and AIDS, in areas where they are not silenced by discriminatory practices, have brought their own experience to the effort against AIDS, taking a position as a leading force in AIDS prevention and control."

The importance of this contribution of people with AIDS in the fight both against AIDS and against discrimination and prejudice was acknowledged by Dr. Asval in the following reference to the efforts by many sectors of society in this regard.

> "Last, but definitely not least, were the efforts made by people living with HIV and AIDS themselves. Courageously and against most odds they started to challenge the taboos and stigmas around AIDS and to claim their rights to be looked upon as people living with HIV and AIDS rather than 'HIV carriers', 'suffering victims', 'patients' or other notions equally disempowering and degrading to the wholeness of their being. They made their health status public and humanized the debate on AIDS, making it harder to argue that people living with HIV and AIDS should be locked up somewhere out of sight. They became the most powerful, credible and sensitive spokespeople of the pandemic!"

109. As the WHO Regional Office for Europe points out:

> "Persons experiencing violations of human rights are not 'suffering victims'. The history of AIDS has brought forward many encouraging examples of how individuals have met this situation as a challenge without self-victimization and fatalism, but as a self-empowering experience. At a personal and at a social level, persons with HIV/AIDS have manifested themselves as the most powerful and credible speakers on the pandemic and are playing a very active and leading role in the fight against AIDS, making use of one of the most valuable resources in this effort - their personal experience." 18/

110. However, as the Rights and Humanity paper 19/ notes, people with HIV or AIDS will be unlikely to acknowledge publicly their infection in circumstances of hostility or discrimination. Thus judgmental attitudes and stigma not only violate the rights of the people affected, but deny society the benefit of the full contribution of people with HIV and AIDS. Public education and awareness campaigns are required to highlight the dangers of prejudice, discrimination and social isolation and to promote solidarity, tolerance and compassion. It continues:

> "A primary role of AIDS education programmes must therefore be fighting the fear, ignorance and prejudice which leads to social rejection and stigmatization of people infected with HIV or considered likely to be infected. Emphasis needs to be given both to increasing public education about the restricted routes of HIV transmission, and to the promotion of compassion and tolerance.
>
> "Much is indeed already being done in this regard. ... many individuals, families, self-help groups and communities are providing a nurturing and supportive environment for people with HIV and AIDS, or others living with ill-health or disadvantage. AIDS service organizations and advocacy groups are in the forefront of successful AIDS care and support programmes, and in promoting effective responses to the personal and social consequences of the epidemic. Similarly, church groups and other religious bodies are playing an increasingly active role, as are public and private authorities concerned with the care of the sick or social welfare.

"Throughout the world people with HIV and AIDS are setting up organizations in response to the personal and social consequences of the epidemic. Many of the people working in these organizations speak of the tremendous sense of empowerment they have achieved through their work - not in spite of, but rather because of, their infection with HIV. When AIDS was first identified, nobody expected that it would have such devastating consequences for women, men and children around the world. But nor could anyone have foreseen that, in a peculiar and often indirect way, AIDS may lead to the empowerment of those sectors of society that have for too long been disadvantaged." 19/

The paper stresses the need to promote empowerment of those individuals within our societies who as a result of disadvantage, low self-esteem or other causes have difficulty in taking up the opportunities open to them, and who therefore need support and assistance in exercising their rights.

111. This need for solidarity was movingly expressed by Sir Donald Acheson in his presentation 20/ to the Pan-European Consultation in the following passage:

"... the problems associated with the AIDS epidemic go beyond the biological characteristics of this particular human retrovirus. They touch the deepest areas of the human psyche which determine which of our neighbours we love and support and which we despise and reject. The human response to AIDS should go beyond simply opposing discrimination and should evoke a positive spirit of solidarity which recognizes that each and every one of us, whether infected or uninfected, shares the responsibility for curtailing spread through our behaviour. The essence of such solidarity and of our dependence upon one another has never been expressed better than in lines written by a poet more than three hundred years ago: 'No man is an island entire of itself: every man is a piece of the Continent, a part of the main. Any man's death diminishes me, because I am involved in Mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.'" (Devotions No. XVII by John Donne.)

B. Strengthening legal protection of human rights

112. It is clear that such a supportive environment cannot be built if people are facing discrimination in law or practice. Thus as a first step, it is essential that States review their laws and practices so that they might repeal or amend any laws, and cease any practices, which offend individual rights and dignity or contribute to the stigmatization of and discrimination against people with HIV and AIDS or other groups in society.

113. As was noted in the progress report (E/CN.4/Sub.2/1991/10, paras. 227-230) there are differing views as to the utility of introducing laws to prohibit discrimination against people with HIV or AIDS or considered likely to be infected. Some people argue that national anti-discriminatory laws should be introduced immediately in order to provide the framework for the protection of the rights of infected people and to give them the right of legal action in case of discrimination. Others question whether litigation is

an appropriate remedy for a person with HIV or AIDS, since legal process involves to a greater or lesser extent publicity, and the stress of court proceedings may place a particularly heavy toll on the health of people who as a result of HIV have a weakened immune system.

114. However, in those States in which anti-discriminatory laws have been adopted, experience suggests that they do in fact provide an effective framework for educating employers and others to avoid discrimination. In a study entitled "The Benefits and Limitations of AIDS Anti-Discrimination Legislation", the City of New York Commission on Human Rights recognizes that anti-discrimination law has both benefits and limitations. It concludes:

> "Anti-discriminiation laws have been put to very good use in the United Sates. But intention and implementation must be kept in mind; laws are only as effective as the people who make them and the people who enforce them. Well crafted laws, while they may not immediately 'protect' people from discrimination, can be very powerful tools indeed as part of a broad education/prevention programme. The existence of laws protecting the human rights of disabled people cannot only improve the quality of life for those who are HIV-affected, they can also provide a framework upon which effective social and public health policies may be built." 21/

115. The Pan-European Consultation on HIV/AIDS in the context of public health referred to above was attended by senior government health officials from 22 member States of the European region of the World Health Organization. The Consultation adopted the Prague Statement on respect for the principles of human rights, ethics and humanity in the context of AIDS (the full text of which is contained in annex II). Although considering the application of these principles in Europe, much of the Prague Statement is of interest in developing strategies to prevent AIDS-related discrimination elsewhere in the world. The Statement confirms that:

> "1. Member States, having accepted the obligations to respect principles of human rights, ethics and humanity laid down in the various relevant international legal instruments on human rights to which they are signatories, should ensure that all laws, policies and practices which directly or indirectly affect HIV/AIDS prevention and control, or could inhibit the legal emancipation and empowerment of women and vulnerable groups, take full account of those principles to ensure that they are up-to-date to deal effectively with the HIV epidemic, taking into account the views of representatives of people affected with HIV/AIDS. In this respect, special attention should be paid to the needs and rights of men who have sex with men, drug users, sex workers, prisoners, migrants, refugees and ethnic minorities. In particular, member States should re-evaluate legislative measures in the field of public health to assess their effectiveness and ethical acceptability in relation to this epidemic, and to revise policies and practices that are inappropriate in a social and cultural context and may have become irrelevant, outdated, or may be regarded as counter-productive in the context of the WHO Global AIDS Strategy.

"2. Member States should strive to ensure that policies and practices in the public domain do not discriminate against people solely on the grounds of their HIV status, and study the appropriateness, desirability and feasibility of introducing protective legislation to provide individuals with legal protection against, and redress for, discrimination, whether by public authorities, private bodies or individuals, relating to HIV/AIDS status in the enjoyment of such rights as the right to work, education, access to social and health care and other resources of society. Freedom of movement across borders should be ensured.

"3. Member States should strive to promote and support health promotion, health education and counselling that can provide the public with the necessary information and services required to encourage behaviour which prevents HIV transmission. Further, member States should consider the introduction of appropriate legislation in this respect. Reasonable and equitable resources for prevention of HIV/AIDS should be made available. Appropriate services should be developed to meet the special needs of vulnerable groups."

116. The benefit of providing legal protection in the context of AIDS-related discrimination was also stressed by participants at the Second International Workshop on Preventing the Sexual Transmission of HIV and other STDs: Promoting Sexual Health, held in Cambridge in March 1991. A working group on the legislative and policy frameworks for promoting sexual health concluded that legislation should be introduced to guarantee equal treatment and prohibit discrimination on grounds of race, gender, sexual orientation, disability, health status, needs and other considerations. The Workshop highlighted once again that the urgency of the need to address AIDS has acted as a spur to the development of effective strategies in a number of fields, based on respect for individual rights and dignity and the principle of non-discrimination. As Hendricks noted in his background paper for this working group:

"Health promotion presupposes a relationship of trust between providers and recipients of health promotion activities. In case of HIV/AIDS and a number of other STDs, we are confronted with a situation in which these diseases disproportionately affect individuals whose lifestyles many people find objectionable. As a result, people with HIV/AIDS or STDs, their partners and carers, and others associated with these diseases become stigmatized and discriminated against. Stigmatization and discrimination not only mean a flagrant violation of some of the fundamental rights of the persons concerned, but also undermine the efforts made by health promotion workers. In this respect Wendy E. Parmet described discrimination as 'a cruel and painful accomplice of STDs and HIV/AIDS, that moreover weakens our ability to limit their spread'." 22/

VII. CONCLUSION AND RECOMMENDATIONS

117. Strategies to prevent AIDS-related discrimination need to combine education (both about the limited routes of transmission of HIV and the need to avoid stigma and prejudice) with legal protection against discrimination in the enjoyment of human rights. In addition, renewed commitment is needed to tackle the underlying causes of discrimination in the enjoyment of economic and social rights which lead to poverty and social isolation; to improving the legal, economic and social status of women and other disadvantaged groups in society; and to promoting tolerance, compassion and solidarity.

118. The Sub-Commission could play an important leadership role in preventing AIDS-related discrimination, and in other ways promoting the protection of and respect for human rights in the context of AIDS. The need for leadership in preventing discrimination has been emphasized by the City of New York Commission on Human Rights in the paper quoted earlier, 23/ which concludes:

> "Perhaps the most important element necessary to successfully respond to the human rights concerns raised by the HIV epidemic is effective leadership. Despite the existence of anti-discrimination laws and enforcement mechanisms in the United States, AIDS-related discrimination flourished from the earliest days of the epidemic. Of course, the reasons for this are many, but one key was a confusing lack of leadership at the highest levels of government. It was not until 1987 when a Presidential Commission on the HIV Epidemic, following the model set by the World Health Organization, took a strong position condemning discrimination that the tide began to turn. Jonathan Mann, while head of the Global Programme on AIDS, noted that it was not necessarily the most developed countries, or the wealthiest countries, that were responding most effectively to AIDS - it was the countries with the best leadership. Responding effectively to AIDS stigma depends on leadership - and leadership can be found everywhere, from bar workers in Thailand to movie stars, from a high school student with AIDS in Indiana to presidents of nations."

119. The Special Rapporteur seeks the views of the Sub-Commission on the points raised in the preliminary and progress reports and in particular about the advisability of sending out a second questionnaire taking into account the comments of those Governments and organizations responding to the first one. The second questionnaire would be designed to study the impact of AIDS-related discrimination on particular sectors of society and with relation to specific issues, and to learn of the measures introduced to prevent or seek redress for discrimination. If the resources could be made available, it would be addressed to specific organizations, professional bodies, human rights commissions and others concerned with the prevention of discrimination, with a view to including the results of the questionnaire in the report.

120. On the basis of the preliminary and progress reports, the Special Rapporteur puts forward the following recommendations for the consideration of the members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities:

1. The Sub-Commission should add its voice to the condemnation of all discriminatory laws and practices in the context of AIDS, and call upon Governments and all sectors of society to build a supportive environment for people affected by the pandemic.

2. The Sub-Commission should therefore welcome the resolution 1992/56 adopted by the Commission on Human Rights at its forty-eighth session and endorse its invitation to the various human rights committees to give full attention to monitoring States parties' compliance with their commitments under the relevant human rights instruments regarding the rights of people infected with HIV or AIDS, their families and people with whom they live, or people presumed to be at risk of infection.

3. The Sub-Commission should recommend to States parties to the various human rights instruments that they include information on AIDS-related discrimination and measures introduced to combat such discrimination in reports submitted to the relevant monitoring bodies.

4. The Sub-Commission should recommend to the Commission on Human Rights that the title of the report should be amended to "Discrimination in the context of HIV and AIDS" in order to enable the study to deal with the wider issues of discrimination raised by the AIDS pandemic, and reflected in the Special Rapporteur's reports.

Notes

1/ This section is based on Global Strategy for the Prevention and Control of AIDS: 1992 Update, World Health Organization, forty-fifth World Health Assembly (A45/29, 28 February 1992).

2/ Acheson, D. "The Public Health Rationale for Respect of Human Rights and Dignity in AIDS", in HIV/AIDS in the Context of Public Health and Human Rights. Report of a Pan-European Consultation, Prague, November 1991, p. 25, published on behalf of the World Health Organization, Regional Office for Europe, International Association of Rights and Humanity.

3/ Asvall, J.E., "HIV/AIDS in the Context of Public Health and Human Rights: Overview of the European Experiences to Date", loc. cit., p. 18.

4/ Hausermann, J., HIV and AIDS in the Context of Human Rights: Towards Strategies for Promoting Respect for Individual Rights and Dignity, loc. cit., pp. 27-28.

5/ Hausermann, J. and Danziger, R., "Women and AIDS: A Human Rights Perspective", paper presentd by Rights and Humanity at the VIIth International Conference on AIDS, Florence, June 1991.

6/ Hamblin, J., and Reid, E., "Women, the HIV Epidemic and Human Rights: A Tragic Imperative", paper presented to the Global Expert Meeting: AIDS, a Question of Rights and Humanity, The Hague, 21-24 May 1991.

7/ Reid, E., Placing Women at the Centre of the Analyses. Proceedings of the Meeting on Women and AIDS (forthcoming). CIDA, Ottawa, Canada, 1990.

8/ See footnote 5.

9/ See footnote 6.

10/ Jallow, H., AIDS and Human Rights in the Context of the African Charter on Human and Peoples' Rights, paper presented to the Global Expert Meeting: AIDS, a Question of Rights and Humanity, The Hague, 21-24 May 1991, published as an occasional paper by the African Centre for Democracy and Human Rights Studies, Banjul, The Gambia.

11/ Op. cit.

12/ La Vertu, D.S., "AIDS, Human Rights and the World Health Organization", paper presented to the Global Expert Meeting: AIDS, a Question of Rights and Humanity, The Hague, 21-24 May 1991.

13/ See footnote 4.

14/ Gostin, L., Porter, L., Sandomire H., AIDS Litigation Project: A National Survey of Federal, State and Local Cases before Courts and Human Rights Commissions and Litigation Project: Objective Description of Trends in AIDS Litigation, Washington, D.C., AIDS Litigation Project, 1990; United States Government Printing Office: 1990-269 353 and 1990-269 354.

15/ National Advisory Committee on AIDS, HIV and Human Rights in Canada, submitted to the Minister of National Health and Welfare, Ontario, January 1992.

16/ See footnote 4.

17/ See footnote 3.

18/ Global Programme on AIDS, WHO Regional Office for Europe, Taking up the challenge in the '90s, compiled by Lisbeth Shore, Copenhagen, 1991.

19/ See footnote 4.

20/ See footnote 2.

21/ Taylor, K., "The Benefits and Limitations of AIDS Anti-Dsicrimination Legislation", the City of New York, Commission on Human Rights, paper presented to the Global Expert Meeting: AIDS, a Question of Rights and Humanity, The Hague, 21-24 May 1991.

22/ Hendriks, A., "The Political and Legislative Framework in which Sexual Health Promotion Takes Place, in Promoting Sexual Health", proceedings of Second International Workshop on Preventing the Sexual Transmission of HIV and other STDs, Cambridge, March 1991; to be published by British Medical Association Foundation for AIDS, London.

23/ See footnote 21.

Annex I

QUESTIONNAIRE ON AIDS: LIST OF REPLIES RECEIVED

Governments	Date received
Australia	4.6.91
Barbados	23.12.91
Belgium	3.7.91
Cameroon	12.8.91
Chad	29.5.91
Colombia	28.5.91
Comores	29.4.91
Cuba	17.6.91
Cyprus	26.4.91
Czech and Slovak Federal Republic	6.6.91
Denmark	18.6.91
Djibouti	1.8.91
Egypt	30.4.91
Finland	8.5.91
Ghana	3.5.91
India	5.6.91
Iceland	10.5.91
Ireland	26.3.91
Kenya	13.5.91
Mauritius	3.6.91
Mexico	15.7.91
Monaco	9.4.91
Morocco	3.5.91
Nepal	14.8.91
Netherlands	23.7.91
New Zealand	5.2.91
Philippines	30.4.91
Poland	2.9.91
Portugal	25.9.91
Santa Lucia	2.5.91
Senegal	2.7.91

Governments	Date received
Solomon Islands	17.4.91
South Africa	6.6.91
Spain	3.6.91
Sweden	23.4.91
Switzerland	3.5.91
Syrian Arab Republic	14.6.91
Tuvalu	7.6.91
Ukraine	1.7.91
Vanuatu	14.5.91
Yugoslavia	26.4.91
United Nations system	
International Labour Office	31.5.91
World Health Organization	3.3.92
United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)	21.3.91
United Nations Conference on Environment and Development (UNCED)	12.4.91
United Nations International Research and Training Institute for the Advancement of Women (INSTRAW)	4.4.91
United Nations Centre for Human Settlements (Habitat)	30.4.91
Department of Economic and Social Development	27.3.91
United Nations Office of Legal Affairs	20.3.91
United Nations High Commissioner for Refugees (UNHCR)	28.3.91
United Nations Interregional Crime and Justice Research Institute (UNICRI)	7.5.91
United Nations Development Programme (UNDP)	30.4.91
United Nations Volunteers	26.3.91
Other intergovernmental organizations	
Council of Europe	14.3.91
Inter-American Commission on Human Rights	24.5.91
Inter-American Court of Human Rights	6.3.91
World Tourism Organization	5.3.91

Non-governmental Organizations	Date received
AIDS Consortium for the Third World	20.5.91
Australian Federation of AIDS	3.5.91
Christian Medical Commission	29.4.91
Council of European National Youth Committees	25.4.91
European Centre for the Epidemiological Monitoring of AIDS	2.5.91
Instituto de Estudios Legales y Sociales de Uruguay	18.4.91
International Federation of Catholic Universities	11.3.91
International Institute of Humanitarian Law	4.3.91
International Organization for Migration	28.2.91
Inter-Parliamentary Union	
Law Reform Commission (Australia)	15.3.91
Medical Women's International Association	7.5.91
Medical Women's International Association	29.4.91
Medical Women's International Association (Northern European Region)	24.4.91
OXFAM	20.3.91
Parliamentarians for Global Action	2.4.91
Redd Barna	30.4.91
Refugee Policy Group	18.3.91
Society for International Development	26.3.91
SI Club "Arnhem-Oost"	29.4.91
Soroptimist International of Europe	2.5.91
Soroptimist International of Europe, German Union, Greek Union	26.4.91
Soroptimist International of Great Britain and Northern Ireland	23.4.91
Soroptimist International (Israel)	5.2.91
Soroptimist International of the South-West Pacific	3.7.91
World Medical Association	15.4.91
World Vision International	28.2.91
Unidentified source	3.4.91

Annex II

THE PRAGUE STATEMENT

Concluding Consensus Statement of the Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights

Prague, November 1991

The Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights was organized jointly by the World Health Organization, Regional Office for Europe and the International Association of Rights and Humanity in Prague, 26-27 November 1991. The Consultation brought together 47 senior medical officers from 22 countries throughout Europe, with representatives of groups most seriously affected by AIDS. The objective was to consider how the principles of human rights, ethics and humanity, as confirmed in international texts and drawn together in the Rights and Humanity Declaration and Charter on HIV and AIDS, could be implemented in addressing HIV/AIDS at the national and regional levels.

The Consultation was aimed at developing a short set of practical, action-oriented guidelines for necessary and urgent action to implement these principles in the context of the social policy and public health strategies outlined in the WHO Global Strategy on AIDS, and in the light of each State's economic and epidemiological situation.

The Participants unanimously adopted the following consensus statement.

"Prague Statement

"At the Pan-European Consultation on HIV/AIDS in the Context of Public Health and Human Rights, held in Prague from 26 to 27 November 1991, participants from 22 Member States in the European Region of the World Health Organization met to discuss the principles of human rights, ethics and humanity in HIV/AIDS prevention and control and, in particular, to share the challenge of developing a short set of practical, action-oriented guidelines for necessary and urgent action, appropriate to each Member State's economic and epidemiological situation, to implement the principles laid down in the many declarations on human rights in the context of the social policy and public health strategies outlined in the WHO Global Strategy on AIDS.

The Consultation unanimously adopted the following recommendations:

A. Public policy/State responsibility

1. Member States, having accepted the obligation to respect principles of human rights, ethics and humanity laid down in the various relevant international legal instruments on human rights to which they are signatories, should ensure that all laws, policies and practices which directly or indirectly affect HIV/AIDS prevention and control, or could inhibit the legal emancipation and empowerment of women and vulnerable population groups, take full account of those principles to ensure that

they are up to date to deal effectively with the HIV epidemic, taking into account the views of representatives of people affected by HIV/AIDS. In this respect, special attention should be paid to the needs and rights of men who have sex with men, drug users, sex workers, prisoners, migrants, refugees and ethnic minorities. In particular, Member States should re-evaluate legislative measures in the field of public health to assess their effectiveness and ethical acceptability in relation to this epidemic, and to revise policies and practices that are inappropriate in a social and cultural context and may have become irrelevant, outdated, or may be regarded as counter-productive in the context of the WHO Global AIDS strategy.

2. Member States should strive to ensure that policies and practices in the public domain do not discriminate against people solely on the grounds of their HIV status, and study the appropriateness, desirability and feasibility of introducing protective legislation to provide individuals with legal protection against, and redress for, discrimination, whether by public authorities, private bodies or individuals, relating to HIV/AIDS status in the enjoyment of such rights as the right to work, education, access to social and health care and other resources of society. Freedom of movement across borders should be ensured.

3. Member States should strive to promote and support health promotion, health education and counselling that can provide the public with the necessary information and services required to encourage behaviour which prevents HIV transmission. Further, Member States should consider the introduction of appropriate legislation in this respect. Reasonable and equitable resources for prevention of HIV/AIDS should be made available. Appropriate services should be developed to meet the special needs of vulnerable groups.

B. Professional ethics and responsibility

4. Since obligations under international legal instruments on human rights include the obligation of States to ensure protection against arbitrary interference with the enjoyment of the right to privacy, Member States should examine present law and practice with a view to ensuring that adequate safeguards are in place to protect confidentiality at all levels of health care and social welfare services.

5. Authorities responsible for the training of health and welfare workers should ensure that adequate education and training in HIV/AIDS prevention and care is part of their basic training programmes. These should focus on providing an understanding of the variations in lifestyles and special requirements of vulnerable groups. Those trained should be made fully aware of the principles of ethics and humanity incorporated in the social policy and public health rationale that are central elements of the WHO Global AIDS Strategy, including their duty to obtain the informed consent of patients/clients prior to the administration of treatment, including testing for HIV infection, and not to discriminate in the provision of treatment, care or services solely on the grounds of suspected or verified HIV status.

6. The practice of all professions involved in dealing with people living with or affected by HIV/AIDS should be re-evaluated and, if necessary, codes of conduct amended or introduced to ensure that professionals adequately protect their rights of access to and enjoyment of health care and social services. Consideration should be given to ensuring that enforcement of professional codes of conduct include the option of using disciplinary measures against professionals who breach their professional ethical responsibilities in this context. Individuals who believe that professionals treating them have not followed ethical guidelines should be empowered to seek appropriate redress.

C. Responsibility of local, national and international community

7. National and local AIDS programmes responsible for planning, designing and implementing HIV/AIDS information and education campaigns should ensure consultation with members of communities and groups targeted in these campaigns. It is the responsibility of society to provide the support and practical means necessary to make all individuals able to act responsibly to avoid the risk of HIV transmission. Campaigns must incorporate the promotion of respect for human rights and the principles of ethics and humanity, in particular the obligation to avoid stigmatization and discrimination on the grounds of ethnic origin, belief, gender, sexual orientation, health status, occupation, economic and social status or lifestyle, and promote tolerance and non-prejudicial attitudes.

8. The mass media must be encouraged through involvement and cooperation in the form of regular briefings and provision of accurate and up to date information by national and local HIV/AIDS programme managers to assist in preventing denial and complacency, and to assist in combating prejudices, stigmatization and discriminatory attitudes which obstruct HIV/AIDS prevention and care efforts.

9. In sharing the challenge of the AIDS pandemic in a concerted and coordinated manner, Member States of the European Region must secure continued support to areas with limited resources in terms of technical and financial assistance through the WHO Global Programme on AIDS and other international, multilateral and bilateral aid programmes."